

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

**PETER WHEELER,**

**Plaintiff,**

**v.**

**9:07-CV-0892  
(TJM/GHL)**

**GEORGE PATAKI, *et al.*,**

**Defendants.**

---

**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION & ORDER**

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. George H. Lowe, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule N.D.N.Y. 72.3(c). The Report-Recommendation dated February 5, 2009 recommended that Defendants' motion for judgment on the pleadings (dkt. # 26) be granted in part and denied in part such that Plaintiff's Eighth Amendment claim be dismissed and that Defendants be directed to respond to Plaintiff's due process and retaliation claims. No objections to the Report and Recommendation have been filed and the time to do so has expired. On February 25, 2009, Defendants filed an Answer to Plaintiff's Second Amended Complaint. See Ans. [dkt. # 51].

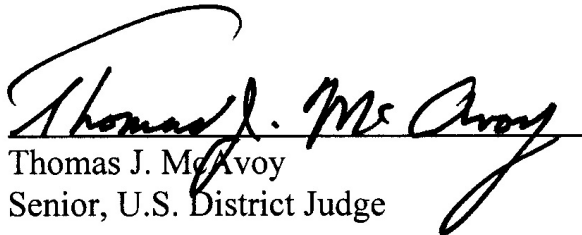
After examining the record, this Court has determined that the Report-

Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopts the Report-Recommendation for the reasons stated therein.

It is therefore,

**ORDERED** that Defendants' motion for judgment on the pleadings (dkt. # 26) is **GRANTED IN PART and DENIED IN PART**. The motion is granted in that Plaintiff's Eighth Amendment claim is **DISMISSED**, and denied as to Plaintiff's due process and retaliation claims.

**DATED: March 11, 2009**

  
Thomas J. McAvoy  
Senior, U.S. District Judge